national President of International Alliance of Theatrical Stage Employes, George Flaherty, International Representative of International Alliance of Theatrical Stage Employes, file this Brief in opposition to the petition for a Writ of Certiorari on file herein.

Opinions Below.

The oral opinion of the Superior Court of the County of Los Angeles, State of California, sometimes hereinafter referred to as "Superior Court," is not officially reported but is set forth as Appendix A in the Brief in Opposition for respondents Association of Motion Pictures, Inc. *et al.*, on file herein. The opinion of the District Court of Appeal of the State of California Second Appellate District, sometimes hereinafter called "District Court of Appeal" entitled James Thomson, *et al.* v. International Alliance of Theatrical Stage Employes, *et al.*, is set forth in the Appendix to the Petition for a Writ of Certiorari at pages 3 to 18 and is reported at 232 A.C.A. 539.

Jurisdiction.

On February 23, 1965, the judgment of the District Court of Appeal affirming the judgment of the Superior Court was entered and a petition for rehearing was denied without opinion on March 16, 1965. The Supreme Court of California denied without opinion a petition for hearing before it on May 12, 1965.

Petitioners seek to invoke the jurisdiction of this Court under Section 301 of the Labor-Management Relations Act of 1947, as amended (61 Stat. 156, 29 U.S.C. §185 (1964)). In this Brief the respondents on whose behalf it is filed challenge jurisdiction.

Questions Presented.

1. Whether the findings of fact to the effect that the Memorandum Agreement of 1962 was not a final and binding collective bargaining agreement vesting petitioners with any rights, are clearly erroneous.

2. If such findings of fact are clearly erroneous, whether respondents acting in good faith and without hostility to petitioners could properly modify the terms of such collective bargaining agreement.

Statutes Involved.

The pertinent portions of Section 9(2) and 301 of the Labor-Management Relations Act of 1947, as amended (61 Stat. 143, 156, 29 U.S.C. §§ 159(a), 185 (1964)) are set forth in Appendix A to this Brief.

Statement.

An accurate and complete description of the facts and events leading up to and underlying the dispute herein is not set forth in the petition. For a complete and accurate statement of such facts, this Court is referred to the District Court of Appeal opinion (Appendix to the petition herein at pages 13 to 18, 232 A.C.A. 539) which affirmed the findings of fact of the Superior Court.

ARGUMENT.

The Opinion of the District Court of Appeal Turns Upon an Analysis of Particular Facts Presenting No Important Question of Federal Law.

Petitioners' various causes of action all evolve from and are based exclusively upon alleged breach by respondents of the so-called Memorandum Agreement of 1961, which petitioners contend was a final and binding collective bargaining agreement vesting them with certain rights.

Petitioners neglect to inform this Court of two controlling and important elements which were discussed by the Superior Court and by the District Court of Appeal. They are (1) the making of an oral agreement by all of the parties before the negotiations began that no agreement would be final and binding until it had been approved by the employers and ratified by the respective locals, and (2) that long before this action was instituted the parties executed a document known as "Basic Agreement," by the terms of which the earlier Memorandum Agreement was rescinded.

Furthermore, as shedding light on the verity of the conclusions of the courts below to the effect that there was no hostile discrimination nor breach of any duty of fair representation on the part of the respondents, it must be borne in mind that by agreement between the employers and representative of Defendant Local the members of the latter were given an option of either spreading a 10% raise proportionately over all schedules (work classifications) or spreading such 10% increase disproportionately. At the largest meeting ever held by Defendant Local it was decided, upon motion of

one of the named petitioners, to submit this option to the membership, to be determined by secret ballot under the supervision of a disinterested Certified Public Accountant.

This was done and a majority voted in favor of a 10% increase for Schedule A, no increase for Schedule B and an increase of approximately 20% for Schedule C. This was done upon the assumption that making Schedule C so expensive to the employers would result in its elimination. At the time of the trial in Superior Court the use of Schedule C had in fact decreased by 50%.

The Superior Court found that the Memorandum Agreement was not intended to be a collective bargaining agreement but instead it was intended to be for the benefit of the persons who had the task of drafting the final collective bargaining agreements.

The District Court of Appeal affirmed this finding and stated that it was based upon adequate evidence. The Superior Court also found, as did the District Court that there was no breach of fair representation by Defendant Local.

A considerable portion of the petition is devoted to a recital of petitioners' evidence on the factual issue of whether the Memorandum Agreement was a final and binding agreement. It is evident that petitioners recognize that their asserted "Federal question of substance" cannot appropriately be raised until and unless this court were to first review all the evidence presented at trial and conclude therefrom, contrary to the conclusions of the District Court of Appeal, that the findings of fact made by the Superior Court were clearly errone-

ous. This court, on many occasions, has held that certiorari will be denied where review is sought of a lower court's opinion which turn solely upon an analysis of the particular facts or upon the construction of particular contracts.

As stated in *United States v. Johnson,* 268 U.S. 220, 227 (1925), "we do not grant a certiorari to review evidence and discuss specific facts." To the same effect is *General Talking Pictures Corp. v. Western Electric Co.,* 304 U.S. 175, 178 (1938), *Aetna Life Ins. Co. v. Dunken,* 266 U.S. 389, 394 (1924); *Portland Railroad, Light and Power Company v. Railroad Comm'n. of Oregon,* 229 U.S. 397, 411-412 (1913).

No Conflict of Decision Exists.

Petitioners do not point to any decision which is in conflict with that of the District Court of Appeal in the instant action. Furthermore, the only persons who could be concerned with or affected by the granting of the petition and a decision by this court contrary to that of the District Court of Appeal would be the petitioners.

The rule of law adhered to by the District Court of Appeal has long since been conclusively settled by the decisions of this court in *Ford Motor Co. v. Huffman,* 345 U.S. 330 (1953); *Humphrey v. Moore,* 375 U.S. 335 (1964); *Aeronautical Industrial District Lodge v. Campbell,* 337 U.S. 521 (1949); *Steele v. Louisville & Nashville Railroad Co.,* 323 U.S. 192 (1944). These decisions stand for the proposition which is clearly applicable to the instant case that a union in the exercise of its statutory power may, in collective bargaining, enter into agreements, be they original agreements

or modifications thereof, restricting the rights of all or a minority of the employees represented and what might in other areas of law be viewed as a deprivation of vested rights, so long as in so doing it does not breach its duty of fair representation by acting in bad faith or with hostility. Other decisions which touch upon this point are: *International Longshoremen's and Warehousemen's Union v. Kuntz,* 334 F. 2d 165 (9th Cir. 1964); *Hardcastle v. Western Greyhound Lines,* 303 F. 2d 182 (9th Cir. 1962), cert. denied 371 U.S. 920 (1962); *Potlatch Forests Inc. v. International Woodworkers of America,* 108 F. Supp. 906 (D. Ida. 1951), aff'd sub nom. *Olson v. Potlatch Forests, Inc.,* 200 F. 2d 700 (9th Cir. 1953); *Hartley v. Brotherhood of Ry. & S.S. Clerks,* 283 Mich. 201, 277 N.W. 885 (1938).

Conclusion.

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Counsel for Respondents Carman, et al.

APPENDIX A.

Statutes Involved.

Section 9(a) of the Labor Management Relations Act of 1947, as amended (61 Stat. 143, 29 U.S.C. § 159(a) (1964)), provides as follows:

> *"(a) Exclusive representatives; employees' adjustment of grievances directly with employer.*
>
> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment."

Section 301 of the Labor Management Relations Act of 1947, as amended (61 Stat. 156, 29 U.S.C. § 185 (1964)), provides in pertinent part as follows:

> *'§ 185. Suits by and against labor organizations.*
>
> *"(a) Venue, amount, and citizenship.*

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."